

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

THOMAS ATHONY DIBARTOLO,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

NO: 2:15-CV-291-RMP

ORDER DISMISSING PETITION

BEFORE THE COURT is Petitioner's single page document titled, "Notice of Appeal Request for Extention of Time to File," which was liberally construed as a Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. Petitioner, a Washington State prisoner incarcerated at the Rhode Island Department of Corrections, Maximum Security, is proceeding *pro se* and has paid the \$5.00 filing fee to commence this action.

It is unclear what Petitioner is trying to accomplish with this most recent submission. Earlier this year, Mr. DiBartolo filed a habeas petition which was transferred to the Ninth Circuit Court of Appeals as second or successive. *See*

1 2:15-cv-00051-SMJ, *DiBartolo v. State of Washington et al.*. On June 25, 2015,
2 the Ninth Circuit denied Petitioner's application for authorization to file a second
3 or successive 28 U.S.C. § 2254 habeas corpus petition in the district court.

4 Petitioner now appears to be attempting to appeal Washington state court
5 decisions to this Court. This Court, however, is precluded from exercising
6 appellate jurisdiction over the decisions of the Washington state courts. *See*
7 *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983)(holding
8 that federal district courts may not exercise appellate jurisdiction over state court
9 decisions); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). This rule applies
10 even when the challenge to the state court's action involves federal constitutional
11 issues. *See Feldman*, 460 U.S. at 484-86; *Worldwide Church of God v. McNair*,
12 805 F.2d 888, 892-93 (9th Cir. 1986). Therefore, pursuant to the *Rooker-Feldman*
13 doctrine, this Court lacks subject matter jurisdiction over Petitioner's claims.

14 Rather, the proper method by which a person may challenge his state court
15 conviction is a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254.
16 *See Preiser v. Rodriguez*, 411 U.S. 475, 487-90 (1973)(if a state prisoner
17 challenges the fact or duration of his confinement, or seeks a determination that he
18 is entitled to release or a shortening of his period of confinement, his only federal
19 remedy is a writ of habeas corpus, with its requirement of exhaustion of state
20 remedies). Based on Petitioner's prior habeas petitions, it would appear that this

1 avenue is foreclosed to Petitioner unless he can meet the requirements of 28 U.S.C.
2 § 2244(b)(2).

3 **IT IS ORDERED** that this action is **DISMISSED** for lack of subject matter
4 jurisdiction.

5 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
6 enter judgment, forward copies to Petitioner and close the file. The Court further
7 certifies that there is no basis upon which to issue a certificate of appealability. 28
8 U.S.C. § 2253(c); Fed. R.App. P. 22(b).

9 **DATED** this 4th day of December 2015.

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11 *s/ Rosanna Malouf Peterson*
12 ROSANNA MALOUF PETERSON
13 Chief United States District Court Judge
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